

**United States Department of Labor
Employees' Compensation Appeals Board**

C.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richmond, VA, Employer**

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**Docket No. 11-14
Issued: July 21, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 1, 2010 appellant filed a timely appeal from the July 13, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for a recurrence of disability due to a consequential work injury. Pursuant to the Federal Employees' Compensation Programs¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after August 2, 2009 due to her accepted work injuries.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In mid 2006 OWCP accepted that appellant, then a 50-year-old mail handler, sustained bilateral carpal tunnel syndrome due to her repetitive work duties over an extended period.²

On November 1, 2009 appellant filed a claim for a recurrence of disability beginning August 2, 2009 which was due to her “March 11, 2006” work injury. She indicated that she stopped her light-duty work on August 2, 2009 and returned to work on August 22, 2009.³ Appellant stated that she had lifting restrictions and pushing and pulling restrictions when she returned to work after her injury. She indicated that she was depressed all the time and had to seek help from a doctor for depression and pain in her hands. Appellant stated that her recurrence occurred when she was reinjured on May 15, 2009 and was unable to work as usual.⁴ Prior to the filing of her recurrence claim, the record contained a September 14, 2009 report in which Dr. Timothy Marqueen, an attending Board-certified orthopedic surgeon, stated that appellant could continue with light-duty work that restricted use of the left hand.

In a statement accompanying her recurrence of disability claim, appellant indicated that she could only lift 5 pounds before May 15, 2009 and was sent to work on the dumper, which dumped out parcels from 5 to 80 pounds or more. She noted that she was asked to work on the dump position and that the job was out of her work restrictions. Appellant stated that she lifted a box that was too heavy and was reinjured, which resulted in surgery. She noted after that incident she was sent downtown and had to sit in a chair on a daily basis and fix damaged mail. Appellant stated that this caused her depression and by August 2009 she had to see a doctor for it and take medication. She stated that she was depressed as the result of pain in her hands and that she felt worthless because she could not perform the jobs she used to perform when she was younger. Appellant provided further description of earlier injuries and surgeries.⁵

In a December 1, 2009 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a January 4, 2010 report produced by Dr. Banerje Koduru, an attending Board-certified psychiatrist, who stated:

“Initially seen on September 24, 2009 and then on October 8 and December 8, 2009. [Appellant] reported that she has been suffering with anxiety for the past 18 years and depression since 2006 after being injured on her job.

² On her claim form, appellant indicated that she first became aware of the claimed injury on March 11, 2006.

³ Although appellant returned to work on August 22, 2009, it appears that she stopped work for additional extended periods after that date.

⁴ Appellant also filed a claim for compensation for wage loss beginning on August 2, 2009. The record shows that appellant retired on disability retirement beginning January 5, 2010.

⁵ In mid 2008 OWCP accepted that appellant sustained work-related left wrist tenosynovitis under a different claim file. The claim file for this injury has combined into the claim file for the present case.

She reports that she developed carpal tunnel syndrome and bilateral surgery did not improve her condition.

“[Appellant] claims that her depression has been getting worse and feels it is due to ongoing disability and is unable to be employed gainfully due to carpal tunnel syndrome.”⁶

In a January 12, 2010 decision, OWCP denied appellant’s claim that she sustained a work-related recurrence of disability on or after August 2, 2009 on the grounds that she did not submit sufficient medical evidence to show that she sustained a consequential injury due to “the established work-related event(s).”⁷ It indicated that Dr. Koduru’s January 4, 2010 report did not contain adequate medical rationale on causal relationship to establish her claim.

Appellant requested a telephone hearing before an OWCP hearing representative in connection with her claim. During the April 26, 2010 hearing, she testified that she first had problems with depression due to her work-related bilateral carpal tunnel syndrome.⁸

In a July 13, 2010 decision, OWCP’s hearing representative affirmed OWCP’s January 12, 2010 decision. She found that appellant did not establish a consequential injury in the form of depression and therefore did not show that she sustained a work-related recurrence of disability on or after August 2, 2009. The hearing representative accepted employment factors stating, “I find that the claimant’s pain from her work injury and her inability to do her daily activities and perform work like she once did are compensable factors of employment.”⁹ She found, however, that appellant did not submit sufficient rationalized medical evidence to establish that she sustained a consequential emotional condition or a recurrence of disability due to the established employment factors.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must

⁶ Appellant also submitted a December 24, 2009 report describing Dr. Marqueen’s performance of a left wrist de Quervain’s release and a left extensor tendon release.

⁷ OWCP did not provide any further description of what employment factors were accepted.

⁸ Appellant indicated that in August 2006 she filed a claim for work-related depression under a different claim file. The record contains some documents from this emotional condition claim, but it is not the subject of the present appeal before the Board. In her August 11, 2006 claim form, appellant asserted that she sustained depression and stress related to financial difficulties caused by her work limitations.

⁹ The hearing representative stated that appellant’s financial difficulties due to the accepted work injuries and her resultant inability to work in a particular position were not compensable employment factors.

show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹⁰

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.¹¹ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, she must present rationalized medical opinion evidence.¹²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁴ The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under FECA.¹⁵

ANALYSIS

In connection with the present case, OWCP has accepted that appellant sustained bilateral carpal tunnel syndrome and left wrist tenosynovitis. Appellant filed a claim alleging that she sustained a recurrence of disability on August 2, 2009 due to a consequential depression condition that she sustained as a result of the pain in her hands from her work-related physical conditions.¹⁶ The evidence indicates that the employer made appropriate light-duty work available to appellant.

In decisions dated January 12 and July 13, 2010, OWCP denied appellant's claim on the grounds that she did not submit sufficient rationalized medical evidence linking her claimed emotional condition (and resultant disability beginning August 2, 2009) to the accepted employment factors. With respect to the accepted employment factors, it stated in its July 13,

¹⁰ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

¹¹ *S.S.*, 59 ECAB 315 (2008).

¹² *Charles W. Downey*, 54 ECAB 421 (2003).

¹³ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁵ *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

¹⁶ Appellant also suggested that the physical condition of her hands directly caused disability beginning August 2, 2009. She mentioned a May 15, 2009 incident at work but did not describe any details.

2010 decision, “I find that the claimant’s pain from her work injury and her inability to do her daily activities and perform work like she once did are compensable factors of employment.”

The Board finds that OWCP properly determined that appellant established employment factors with respect to pain from her work-related upper extremity conditions and with respect to the manner in which this pain affected her ability to work and perform the activities of daily living. As noted above, the Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under FECA.¹⁷

The Board further finds that OWCP properly determined that appellant did not submit sufficient rationalized medical evidence to establish that she sustained a consequential emotional condition or a recurrence of disability due to the established employment factors.

Appellant submitted a January 4, 2010 report in which Dr. Koduru, an attending Board-certified psychiatrist, reported her belief that her work-related carpal tunnel syndrome contributed to her depression since at least 2006. Dr. Koduru stated, “[Appellant] claims that her depression has been getting worse and feels it is due to ongoing disability and is unable to be employed gainfully due to carpal tunnel syndrome.” However, this report is of limited probative value on the relevant issue of the present case because Dr. Koduru merely restated appellant’s opinion and did not provide his own opinion on appellant’s emotional condition and its causes, whether work related or not. Appellant did not submit any other medical evidence relating to her claimed consequential emotional condition.

The record also contains limited medical evidence relating to appellant’s physical condition during the period of claimed recurrence of disability beginning August 2, 2009. In a September 14, 2009 report, Dr. Marqueen, an attending Board-certified orthopedic surgeon, stated that appellant could continue with light-duty work that restricted use of the left hand. In a December 24, 2009 report, Dr. Marqueen described his performance of a left wrist de Quervain’s release and a left extensor tendon release. However, these reports do not contain a clear opinion that the described disability and need for surgery were related to appellant’s work-related conditions. Appellant has not submitted rationalized medical evidence showing that her work-related physical condition directly contributed to her sustaining a recurrence of disability on or after August 2, 2009.

For these reasons, appellant did not show that she sustained a recurrence of disability on or after August 2, 2009 due to her accepted work injuries.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after August 2, 2009 due to her accepted work injuries.

¹⁷ See *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board